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LOS ANGELES SUPERIOR COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| THE PEOPLE OF THE STATE OF CALIFORNIA,<br>Plaintiff,<br>vs.<br>ROBERT BLAKE<br>Defendant, | Case No. LA040377<br>RESPONSE TO DEFENDANT'S MOTION TO INTRODUCE EVIDENCE OF THIRD PARTY CULPABILITY<br>DATE: 10/14/2004<br>TIME: 9:00 AM<br>DEPT: NW "S" |

## I.

## Introduction

This Court previously considered, and ultimately rejected, defendant Blake's attempt to introduce evidence of third party culpability. The previous motion failed because defendant did not produce any evidence connecting the alleged third party, Christian Brando, to the actual commission of the victim's murder. Defendant now renews his motion. His renewed motion is based largely on facts or theories that were or could have been previously asserted in his initial motion, and defendant should not be allowed to relitigate claims that were or could have been presented in his original motion. To the extent that defendant's renewed motion relies on additional facts or theories, his successive attempt suffers from the same essential failure as his original version; a complete inability

to demonstrate Mr. Brando was involved in the victim's murder. Rather than curing the evidentiary defect of his original motion, defendant's new but unimproved argument presents a large cast of identified and unidentified characters that defendant would like to incriminate in an unspecified vast conspiracy to murder the victim. His motion also presents alternative theories based on a variety of proposed scenarios.

Thus, defendant's original claim of third party culpability has now morphed into a claim of fourth or fifth party culpability as defendant spends 60 pages in his motion attempting to weave together a myriad of unconnected details about a wide variety of people in support of a various proposed scenarios in which someone else–anyone else–is suggested to be the victim's killer. But at the end of his long story, all the defendant can say is the killer's identity "remains unknown" (Motion at p.59), and that it is "possible" that one or even several people killed the victim. (Motion at p.59.) His renewed motion, therefore, ultimately fails for the same reason that his original motion was properly denied by this Court -- his inability to identify ***any*** third party as having been involved in the victim's murder. This Court should deny the motion because it fails to satisfy the foundational requirements for evidence of third party culpability and also because granting the motion to allow presentation of defendant's many unfocused theories would only confuse and mislead a jury.

**A. General Legal Principles**

Evidence of the culpability of a third party offered by a defendant to demonstrate that a reasonable doubt exists concerning his or her guilt, must link the third person either directly or circumstantially to the actual perpetration of the crime. In assessing an offer of proof relating to such evidence, the court must decide whether the

evidence could raise a reasonable doubt as to defendant's guilt and whether it is substantially more prejudicial than probative under Evidence Code section 352. (*People v. Cunningham* (2001) 25 Cal.4th 926, 996.)

Evidence of a third party's motive or opportunity to commit the crime alone is not enough to raise a reasonable doubt about the defendant's guilt. (*People v. Hall* (1986) 41 Cal.3d 826, 833; *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1136-1137; *People v. Kaurish* (1990) 52 Cal.3d 648, 684-686 [mere evidence of third party's anger toward victim was insufficient]; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1017-1018 [third party's possible motive alone insufficient to raise a reasonable doubt of defendant's guilt]; *People v. Adams* (2004) 115 Cal.App.4th 243, 251.) "*At a minimum, the [third party culpability] evidence must tend to exclude the defendant as the perpetrator of the crime.*" (*People v. Jackson* (2003) 110 Cal.App.4th 280, 289, emphasis added.)

In *People v. Hall, supra*, 41 Cal.3d 826, the defendant made a compelling offer of proof. He offered evidence that a third party had expressed his knowledge of intimate details of the murder, was left-handed, and wore "waffle-stomper" shoes around the time of the murder. (*Hall, supra,* 41 Cal.3d at pp. 830-831.) The victim's hyoid bone was broken on the left side, suggesting the person who strangled him was left-handed, there were waffle-stomper prints in the victim's bedroom, and the third party did have knowledge of unique particulars of the murder. (*Id.* at p. 833.) In sum, the defendant offered evidence directly pointing to the third party as the possible killer. (*Ibid.*) The Supreme Court found harmless error in the exclusion of the evidence. (*Id.* at p. 835.)[1]

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[1] As will be shown, the facts of *Hall* are completely different than the instant case. Therefore, defendant's claim that *Hall's* facts are ***identical in relevant respects*** (Motion at

In two later cases, however, the Supreme Court found the exclusion of third party culpability evidence did not constitute error. In *People v. Farmer* (1989) 47 Cal.3d 888 (*Farmer*) (overruled on other grounds in *People v. Waidla* (2000) 22 Cal.4th 690, 724, fn. 6), the defendant offered evidence of a third party's history of violent crime on the theory it tended to identify him as the perpetrator.

> [T]he proffered evidence [in *Farmer*] was properly excluded under Evidence Code section 1101, because it was offered not to show a fact other than the third party's criminal disposition, such as motive or intent, but merely to show that the third party was the more likely perpetrator because he had a history of violence. [Citation.] Such evidence does not amount to direct or circumstantial evidence linking the third person to the actual perpetration of the crime.

(*Davis, supra,* 10 Cal.4th at p. 501.)

*Davis, supra,* 10 Cal.4th 463, presented the same hurdle. The defendant there, accused of various sex crimes and murder, attempted to introduce evidence that a third party "previously engaged in an act of forcible group sex at a party where he was furnishing cocaine and had previously offered to trade sex for cocaine." (*Id.* at p. 500.) The victim also used cocaine. (*Ibid.*) As in *Farmer,* the proposed evidence was an obvious attempt to show that the third party was more likely to have been the killer because he had a history of violence. The Supreme Court upheld the exclusion of the evidence because there was no evidence *directly* linking the third party with the actual murder. (*Id.* at p. 501.)

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59; emphasis by defendant) is meritless.

In all three cases, the Supreme Court evaluated whether the proffered evidence of third party culpability was "capable of raising a reasonable doubt of defendant's guilt." (*Hall, supra,* 41 Cal.3d at p. 833; *Davis, supra,* 10 Cal.4th at p. 501, *Farmer, supra,* 47 Cal.3d at p. 921.) To raise a reasonable doubt, the Supreme Court decided, there must be evidence *linking* the third party to the *actual perpetration* of the charged offenses. (*Davis, supra,* 10 Cal.4th at p. 501; *Hall, supra,* 41 Cal.3d at p. 833; see also *People of Territory of Guam v. Ignacio* (9th Cir. 1993) 10 F.3d 608, 615 ["Evidence of third-party culpability is not admissible 'if it simply affords a possible ground of suspicion against such person; rather, it must be coupled with *substantial evidence* tending to *directly* connect that person with the *actual* commission of the offense.'" Emphasis added.].)

**B. Analysis**

**1. Defendant Fails to Make the Required Showing Linking Any Third Party To The Commission of the Murder**

In the case at bar, as already noted, defendant Blake previously failed to present any evidence to this Court linking Christian Brando to the actual perpetration of the victim's murder. Instead, defendant now alleges that during a tape-recorded telephone conversation in October or November of 2000 -- six or seven months before the murder -- Mr. Brando allegedly told the victim she is "lucky somebody ain't out there to pull a bullet in your head [sic]." Mr.Brando does not threaten the victim in that conversation; on the contrary, he specifically tells her he is not speaking on his own my behalf.

Defendant also now claims that more than two months before the murder, Diana Mattson overheard portions of a multi-party telephone conversation that included Mr.



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Brando. Conveniently, Mattson now alleges that Mr. Brando was speaking via a speaker-phone, allowing her to eavesdrop on him. She alleges that at some point in the conversation Mr. Brando referred to the victim and said "someone ought to put a bullet through that bitch's head."

Defendant makes no effort to explain how Brando's alleged remarks constitutes admissible evidence. And regardless of the evidentiary obstacle, the statement does not constitute evidence of Brando's involvement in a murder that occurred months later. There is no claim, for example, that the victim was discussed at any other time in this telephone conversation, nor is there any evidence that Mr. Brando ever engaged any of the other conversationalists in any discussion of a plot to kill the victim. Nor is it alleged that at any time subsequent to the conversation Mr. Brando engaged in any communication with any person regarding a plot to kill the victim.

The two alleged telephone statements, taken individually or together, completely fail to satisfy the legal requirements of third party culpability evidence. Neither alleged statement offers any evidence linking Brando to the actual perpetration of the murder, as required by the above authorities. Neither statement presents evidence of any plan by Brando, nor does either statement offer any evidence of any steps actually taken by Mr. Brando to murder the victim. Similarly, there is no evidence that Brando ever solicited any person to commit the murder.

In short, defendant demonstrates no connection between Mr. Brando and the murder, much less the substantial connection required to admit evidence of third party culpability . He merely offers two alleged statements by Mr. Brando, each made at a

different time and both made well before the crime, that reflect Brando's anger toward the victim. As a matter of law, such "evidence" fails to meet the threshold requirements of third party culpability.

The Supreme Court's opinion in *People v. Kaurish, supra,* 52 Cal.3d 648, is instructive here. In *Kaurish,* the defendant proposed to introduce evidence suggesting that a certain Jay-Jay Sheffner might have been the real murderer. The prosecutor made a motion *in limine* to exclude this line of inquiry, which the trial court granted. During the hearing on the motion, defense counsel told the court that he had been informed by David Pelletier, a friend and associate of defendant, that Joan and her daughter, the victim, had stolen an unspecified sum of money and a painting from Sheffner and then had bragged about it, and that Sheffner had told Pelletier he would "get even" with both mother and daughter. This incident allegedly took place a week or two before the murder. Pelletier assertedly also told counsel that Sheffner had a past history of child sexual molestation. Both these facts, counsel argued, pointed sufficiently to Sheffner as a possible murder suspect to permit his questioning Joan on the matter.

The prosecutor, on the other hand, contended that any evidence of Sheffner's alleged history of sexual molestation was either impermissible character evidence under Evidence Code section 1101, or impermissible hearsay, or both. In addition, the prosecutor claimed that according to his own interrogation of David Pelletier the alleged theft by the victim and her mother and Sheffner's ensuing vow of revenge took place eight or more weeks before the murder. Based on the foregoing, the trial court ruled the incident was too remote and insubstantial to link Sheffner with the murder. Defendant, later convicted of

capital murder, argued on appeal that the ruling was prejudicial error.

The California Supreme Court in *Kaurish* affirmed the trial court's exclusion of the evidence, stating :

> The principles of law are clear. In *People v. Hall* (1986) 41 Cal.3d 826, 226 Cal.Rptr. 112, 718 P.2d 99, we rejected the rule that evidence of third party culpability could be admitted only if there was a "substantial proof of a probability" of guilt. (*Id.* at p. 833, 226 Cal.Rptr. 112, 718 P.2d 99.) Rather, we held that the standard for admitting evidence of third party culpability was the same as for other exculpatory evidence: the evidence had to be relevant under Evidence Code section 350, and its probative value could not be "substantially outweighed by the risk of undue delay, prejudice, or confusion" under Evidence Code section 352. (41 Cal.3d at p. 834, 226 Cal.Rptr. 112, 718 P.2d 99.) In addition to articulating a general standard in *Hall*, we formulated more specific guidelines to judge admissibility of evidence of third party culpability: the rule does not require "that any evidence, however remote, must be admitted to show a third party's possible culpability.... [E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Id.* at p. 833, 226 Cal.Rptr. 112, 718 P.2d 99.)

In the present case the record reveals that defense counsel in effect

claimed the right to question only Joan concerning the alleged incident with Jay-Jay Sheffner; even if Pelletier's testimony had been admissible, counsel abandoned any intent to call him as a witness. The most that counsel was prepared to establish was that Sheffner had a motive for being angry with the victim's mother, and possibly with the victim. But such evidence does nothing to link Sheffner to the actual perpetration of the crime, as required by *Hall, supra*, 41 Cal.3d 826, 226 Cal.Rptr. 112, 718 P.2d 99. We find that the court was within its discretion in concluding that the slight probative value, if any, of this evidence was substantially outweighed by the possibility of jury confusion and undue delay.

(*People v. Kaurish, supra*, 52 Cal.3d at p. 684.)

In *People v. Pride* (1992) 3 Cal.4th 195, 238, a janitor was convicted of killing two employees. Pride sought to prove that the husband of one the employee victims, who had been present at the work place on the day of the killing, benefitted from an insurance policy on his wife's life. The trial court found this evidence failed to distinguish the husband from "any other person who is named as a beneficiary" following a homicide. That the husband traveled extensively and later remarried also was found insufficient. Finally, the Supreme Court in *Pride* pointed out, "contrary to defendant's implication, the lack of corroboration that [the husband] was *not* present at the time of the crimes is not evidence that he *was* present. Absent any physical or other evidence linking [the husband] to 'actual perpetration' of the murders, the alleged third party evidence was irrelevant." (*Pride, supra*, at pp. 237-238.)

And in *People v. Sandoval* (1992) 4 Cal.4th 155, 176-177, the trial court excluded proffered third party culpability evidence that two other individuals had plausible motives. The defense offered "no direct or circumstantial evidence linking them to actual perpetration of the crimes." Without such a link, the evidence was not admissible, because it "did not identify a possible suspect other than the defendant or link any third person to commission of the crime, or even establish an actual motive rather than a possible or potential motive." (*Id.* at p. 177.)

A recent decision of the Court of Appeal makes the same point. In *People v. Adams, supra,* 115 Cal.App.4th 243, the defendant Adams claimed that the trial court had erred by refusing to allow Adams to produce evidence suggesting that a third party ("Kallerup") killed the victim ("Edgren"). In addition to showing that Edgren and Kallerup had a stormy and violent history; Adams proposed to call another witness to testify she talked with Kallerup four to five months before the killing when he told her "'that he was very angry and frustrated'" with the victim and "'that there had been a physical battle between the two of them.'" Another witness would have testified that Edgren told her that "'Rick Kallerup tried to kill her by choking her around the neck.'" (*People v. Adams*, 115 Cal.App.4th at 250.)

Kallerup had originally been the "prime suspect." The police had deemed it "possible" that Kallerup could have been responsible notwithstanding his alibi. Furthermore, a detective had found Camel cigarette butts both in Edgren's apartment, and in the Townhouse Motel where Kallerup was located the day after the killing. Additionally, investigators found two crushed Budweiser beer cans a couple of days after the killing in the

victim's carport, looking exactly like those located in Kallerup's motel just after the incident. (*People v. Adams*, *supra*, 115 Cal.App.4th at 251.)

The trial court in *Adams* concluded the evidence was not sufficient to qualify under the California standard for third-party culpability evidence and excluded the evidence. On appeal, the Court of Appeal concluded in *Adams* the trial court had correctly excluded the evidence , as it was "lacking sufficient direct or circumstantial evidentiary value or connection to link Mr. Kallerup to the actual perpetration of the crime or crimes." The crushed beer cans and cigarette butts were similarly deemed inadequate as constituting only speculative evidence. "[E]xclusion of evidence that produces only speculative inferences is not an abuse of discretion." (*People v. Adams,* 115 Cal.App.4th at p. 253, *citing People v. Babbitt* (1988) 45 Cal.3d 660, 684.)

In addition, Kallerup's history of violence toward Edgren, without direct or circumstantial evidence linking Kallerup to the actual perpetration of the crime, was inadmissible under Evidence Code section 1101. (*People v. Davis* (1995) 10 Cal.4th 463, 500-501, 41 Cal.Rptr.2d 826, 896 P.2d 119.) Wilson's proposed testimony that Kallerup told her he was angry and frustrated with Edgren and that the two had had a "physical battle" and Doyle's that Edgren told her that Kallerup once choked her were insufficient to link Kallerup to the actual perpetration of the crime. (*People v. Alcala* (1992) 4 Cal.4th 742, 792, 15 Cal.Rptr.2d 432, 842 P.2d 1192.) Moreover, neither of the two witnesses had personal knowledge that Kallerup had assaulted Edgren. Consequently, their statements were inadmissible hearsay

which cannot form a basis for third-party culpability. (*People v. Bradford*, *supra*, 15 Cal.4th at pp. 1324-1325, 65 Cal.Rptr.2d 145, 939 P.2d 259.) They also do not establish Kallerup's presence at the scene of the murder. "[E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt...." (*Hall*, *supra*, 41 Cal.3d at p. 833, 226 Cal.Rptr. 112, 718 P.2d 99.)

(*People v. Adams, supra* 115 Cal.App.4th at p. 253.)

In the present case, the deficiency in defendant's offer of proof here is the absence of the connection between Mr. Brando's isolated statements and the actual commission of the murder long after those statements were made. The "evidence" must show more than a potential motive. (*People v. Basuta* (2001) 94 Cal. App.4th 370, 386-387.) It must show more than a hostility between a third party and the victim. It must show that the third party was involved in the actual crime. There is no such showing here.

Lacking any such evidence as to Mr. Brando, defendant invents a scenario where ***another*** person (a fourth party, as it were) is implicated in the murder. He does so ( at least for one of his alternative theories) by pointing the finger at Ronald Hambleton. Hambleton, says defendant, participated in the speaker-phone conversation and -- months later -- offered someone money to kill the victim. In other words, unable to present any evidence that Mr. Brando engaged anyone to commit the crime, offered anyone money or otherwise took any affirmative steps, defendant constructs Hambleton as a proxy for Mr. Brando and asks this Court to speculate –in the absence of any evidence--that Mr. Brando



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arranged with Hambleton to have someone (a fifth party) kill the victim. Alternatively, defendant speculates that maybe there was no agreement between Mr. Brando and Hambleton, and Hambleton instead simply took it upon himself to kill the victim to curry favor with Brando. (Motion at 60.) Or, defendant suggests, maybe Hambleton proposed to Keith Seals that Seals commit the murder. This is exactly the sort of speculative "pick a card, any card" theory barred by the authorities that address third party culpability.

Not surprisingly, defendant cites no authority allowing anything approaching his circuitous claim of fourth and fifth party liability. Admitting that "the identity of the shooter remains unknown" in his incomplete scenario, he also suggests the shooter may be Smith, Jones, "or another as yet undisclosed individual" based on an unknown and undisclosed plot either engineered by Brando, by Hambleton or by someone else. In effect, defendant is telling the Court that as long as he can posit *some* hypothetical scenario where *some* known or *unknown* person *might* have committed the crime, he has satisfied the legal requirements for admitting third party evidence. Defendant's incomplete and wholly speculative fifth party theories falls far short of the evidentiary requirements of third party culpability.

**2. Not Only Does the Proposed Theory Lack Any Probative Value, Its Exclusion is Also Warranted Under Evidence Code Section 352**

Even if there were an adequate foundation for third-party culpability evidence in this instance, the court retains discretion to exclude it under Evidence Code section 352. (*People v. Von Villas, supra,* 10 Cal.App.4th at p. 265.) *Kaurish* is again

instructive. There, the defendant was prevented from introducing evidence that the victim had stolen money and property from an identified third-party who had threatened to "get even." There was no abuse of discretion in finding that the "probative value, if any, of this evidence was substantially outweighed by the possibility of jury confusion and undue delay." (*Id.* at p. 685; *accord People v. Adams*, supra, 115 Cal.App.4th at p. 254.)

The evidence here is even weaker than in *Kaurish* because here there is no evidence of an overt threat by Brando, much less any evidence of other conduct by Brando relating to an alleged threat. Given *Kaurish* and other decisions like it that have upheld exclusion of evidence of the sort proffered here, defendant's showing falls far short of the required evidence . (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1136-1137 [evidence that "Pablo or some other third party involved in drug trafficking had a motive or possible opportunity" to commit the murder]; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1017-1018 [evidence that victim sold drugs and ran around with "Hell's Angel-type people"]*People v. Adams, supra*, 115 Cal.App.4th at p. 254).

In evaluating the possibility of jury confusion and undue delay, the People need only point to defendant's 60-page motion to admit the evidence, as the elaborate motion attempts to present a case of third party culpability based on a multitude of elaborate revisions of the evidence, leaps in reasoning, misstatements of fact, omissions of fact, inadmissible proffers, internal contradictions and mutually exclusive scenarios.

In this response, the prosecution will not attempt to counter literally every item in defendant's circuitous scenario. Instead, the People will focus on some of the more blatant examples of the flaws in defendant's motion.

3. **The Speaker-phone Conversation Allegedly Overheard By Dianne Mattson and the Alleged Brando/Hambleton Conspiracy Theory**

Even if one overlooks the lack of probative value in the statements Mattson attributes to Brando, and decides to consider the statements on the merits, her credibility will be at issue and subject to extensive impeachment by the prosecution. The People will establish that when Mattson was interviewed by police shortly after the murder, she made no mention of hearing the statements she now attributes to Brando. Detectives specifically asked Mattson to contact them if she recalled additional information. She never did. Instead, she revealed her epiphany to Court Television in a televised interview. Her explanation for her delayed recollection -- that she only recalled the conversation when reading an Oregon newspaper in 2003 -- will in turn be impeached with her claim that she first recalled the call while watching the preliminary hearing. The necessity of allowing the Prosecution to explore Mattson's myriad versions of reality is exactly the sort of undue delay and confusion reviewing courts have warned against.

Mattson's testimony about an alleged speaker-phone telephone call is further complicated by the fact that Mattson's claim that Hambleton participated in the call has been denied by Hambleton. Further, Hambleton even denies that he has ever even met Mr. Brando. And Mr. Brando denies knowing Ronald Hambleton. Thus it appears that substantial time will need to be spent in defendant's trial allowing him to attempt to establish that the alleged "Duffy" in the phone call was Mr. Hambleton. It appears that Mattson can only identify "Duffy" by voice, if at all. According to Mattson, the "Duffy"

who participated in the alleged speaker-phone call was meeting Mr. Brando for the first time during that call. That version contradicts the numerous witness statements presented by the defense that Mr. Brando and "Duffy" (presumably Mr. Hambleton) were long time acquaintances. If the "Duffy" that Dianne Mattson heard on the phone was Ronald Hambleton, then the "Duffy" referred to in the other interviews is some other person. The issue of one Duffy or two will necessitate undue consumption of time and is likely to needlessly confuse or mislead the jury since there is no evidence that the alleged telephone call resulted in anything related to the victim's murder.

**4. The Derelict Drug Addict Theory**

In an alternative scenario that is unconnected to and inconsistent with the alleged Brando/Hambleton speaker-phone conspiracy plot, defendant suggests (with mostly inadmissable evidence) that maybe Mark Jones, a derelict drug addict having no connection to the victim, was driving a 1973 Lincoln Mark IV on the night of the murder and was somehow involved in the murder. But there is no evidence linking this vehicle to the murder. A suspicious car seen by neighbors some blocks away was described in such away that it could not be the Lincoln Mark IV. There is also no evidence as ro who was driving it the night of the murder or that the alleged driver, Jones, had any motive whatsoever to kill the victim.

No mention had been made of a Lincoln Mark IV at any time in this investigation up until the recent conditional examination of William Jordan. At that time, in response to defense counsel's leading question on cross examination, Mr. Jordan acknowledged hearing the defendant mention such a car at some point in time but had no

memory of the context. Mr. Jordan never mentioned a Lincoln Mark IV in any of his previous interviews. When defendant was interviewed by police he mentioned only a black pick-up truck and a blue van as possible suspicious vehicles he had seen prior to the murder. Earle Caldwell mentioned only those same two vehicles when he was interviewed by police. Neither defendant nor Caldwell ever mentioned a Lincoln Mark IV. There is no evidence linking this vehicle to the murder and any testimony about it would simply cause confusion. It is not probative in any sense. It does not even advance counsel's alternative Brando/ Hambleton theory, as there is no evidence that either Mr. Brando or Mr. Hambleton ever even had a conversation, much less entered into a conspiracy, with Mark Jones to kill the victim.

In determining whether proffered evidence could raise a ***reasonable*** doubt as to defendant's guilt, this Court is entitled to consider the irrelevant and speculative nature of defendant's multiple and incomplete third and fourth party theories. Defendant's multiple alternative scenarios are not based on admissible evidence, but rather are based on wildly speculative inferences. None of the proposed theories has a tendency in logic and reason to prove or disprove any disputed fact. (Evid. Code § 210.)

Since defendant has failed to provide the foundation required for evidence of third party culpability, the evidence should be rejected. Alternatively, even assuming for the sake of argument that the foundational requirements have been satisfied, the Court should exercise its discretion under Evidence Code section 352 to exclude the theories.

**C. Defendant's Legal Analysis**

In the brief portion of defendant's motion that is devoted to a legal analysis

(Motion at 55-60), he claims that "ample evidence ties Mr. Hambleton, Mr. Brando, ***and others*** to Ms. Bakley's murder . . . ." (Motion at 55; emphasis added.) His own phrasing shows that he cannot connect a specific third party, i.e., Brando, to the crime. Instead, he attempts to connect various individuals -- known and unknown -- in different vague and unspecified plots. But that is not the legal standard.

Defendant also asserts if his tape recorded phone conversation with the victim is relevant, by parity of reasoning Brando's is relevant as well.[2] Defendant reasons that **he** did not threaten the victim during a tape recorded conversation, while Brando "raged" at the victim when on the phone with her. (Motion at 56.) Leaving aside defendant's hyperbole, and his self-serving characterizations of the respective phone calls, defendant conveniently overlooks the wealth of additional evidence specifically connecting him to the murder -- in particular his unambiguous solicitation of others to commit the crime. There is no such evidence with respect to Mr. Brando. On the contrary, as already noted, there is no evidence Brando ever took any steps to carry out any threat in the months between the alleged statements and the murder.

When watering down his menacing tape- recorded calls, and denying the existence of any tape recording in which defendant expressly or impliedly threatened the victim, defendant asserts that "[i]f such a tape were to exist, the prosecution surely would be trying to offer it into evidence against Mr. Blake." (Motion at 56.) In fact, as he is aware, several witnesses have reported that defendant explicitly and unambiguously threatened to

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[2] Defendant falsely asserts that both of Mr. Brando's alleged statements were recorded. (Motion, p. 56)

kill the victim on various occasions. Those statements –that defendant said he "had a bullet for Bonnie,"that he "hated her guts and...had a bullet with her name on it" and that told her "he would have her killed"–were disclosed to police within a week of the murder. Given defendant's liberal view of the relevance of such statements, ostensibly he will not object to the admissibility of those threats toward the victim prior to her murder.

Defendant also alleges that he, unlike Brando, has not been convicted of manslaughter. If he had, he says, "the prosecution would surely be offering this fact as evidence against him." (Motion at 56-57.) It is unclear how this point advances defendant's legal argument, other than by making the impermissible claim that a prior conviction necessarily reflects a disposition to commit crime -- an inference specifically prohibited by Evidence Code section 1101. He surely knows that a 1991 manslaughter plea involving totally different circumstances would not be admissible in this proceeding to shown intent or common scheme, although he argues to the contrary. Defendant is correct insofar as he is claiming that prior conduct may be relevant to show intent. For that very reason, the Prosecution will offer extensive evidence of defendant's plans to murder the victim. There is simply no such evidence as to Brando.

Lacking any such evidence as to Brando, defendant invents a scenario where ***another*** person ( a fourth party, as it were) is implicated in the murder. He does so by pointing the finger at Duffy Hambleton. Hambleton, says defendant, participated in the speaker-phone conversation and -- months later -- offered someone money to kill the victim. In other words, unable to present any evidence that Brando engaged anyone to commit the crime, offered anyone money or otherwise took any affirmative steps, defendant constructs

Hambleton as a proxy for Brando and asks this Court to speculate that Brando arranged with Hambleton to have someone ( a fifth party) kill the victim. Alternatively, defendant speculates that maybe there was no agreement with Brando at all, and Hambleton simply took it upon himself to kill the victim to curry favor with Brando. (Motion at 60).

Not surprisingly, defendant cites no authority allowing anything approaching his circuitous claim of fourth and fifth party liability. Admitting that "the identity of the shooter remains unknown" in his incomplete scenario, he suggests the shooter may be Smith, Jones, "or another as yet undisclosed individual" based on an unknown and undisclosed plot either engineered by Brando, by Hambleton or by someone else. In effect, defendant is telling the court that as long as he can posit some hypothetical scenario where some known or unknown person might have committed the crime, he has satisfied the legal requirements for admitting third party evidence. Defendant's incomplete and wholly speculative fifth party theory falls far short of the evidentiary requirements of third party culpability.

## CONCLUSION

For the foregoing reasons, The People respectfully submit that defendant's motion to introduce evidence of third party culpability should be denied.

Dated this 7th day of October, 2004

Respectfully submitted,

STEVE COOLEY
District Attorney

By: Shellie Samuels

SHELLIE SAMUELS
Deputy District Attorney